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No. 07-456

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In The

Supreme Court of the United States

PAUL BAGHERPOUR,

Petitioner,

v.

KENNETH SNYDER and JACQUELINE SNYDER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Background

Following a two-day trial in June, 2005, the Jury found that petitioner Paul Bagherpour and co-defendant Tawoos Bazargani committed deliberate violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and Pennsylvania's Human Relations Act, 43 P.S. § 955(h)(1). Specifically, the Jury found that Bagherpour and Bazargani refused to rent Bazargani's condominium to plaintiffs Kenneth Snyder and Jacqueline Snyder because the Snyders are Jewish.

The Jury further found that at one point during negotiations for the rental property, Bagherpour had questioned plaintiff Kenneth Snyder about his religious affiliation to determine the Snyders' suitability as tenants. In granting the Snyders partial summary judgment against Bagherpour on the limited issue of his liability under § 955(h)(6) of the Pennsylvania Human Relations Act, which prohibits property owners or their agents questioning prospective tenants about their religious affiliation, the District Court's relied on Bagherpour's admission that he had indeed questioned Kenneth Snyder about Snyder's religious affiliation.

Based on the Jury's finding that both Bagherpour and Bazargani had engaged in intentional discrimination, the Jury awarded the Snyders $40,000 in compensatory damages against both defendants. In addition, the Jury awarded the Snyders $30,000 in

punitive damages against Bagherpour, and $20,000 in punitive damages against Bazargani. Based on the Jury's verdict, the District Court entered judgment against both defendants in the total amount of $90,000.

Both Bagherpour and Bazargani filed separate motions for new trials, which the District Court denied. Both Bagherpour and Bazargani appealed and, on June 22, 2007 the Court of Appeals for the Third Circuit issued a non-precedential opinion affirming the District Court's judgment in its entirety. Bagherpour has now filed a Petition for Writ of Certiorari, raising two issues for this Court's review.[1]

II. Argument

A. Bagherpour's First Amendment claim is premised on irrelevant hypotheticals in which tenants suffer no injury, contrary to the Jury's express finding below

As the Third Circuit recognized, Bagherpour never denied "that he asked the Snyders about their religious affiliation in connection with the leasing of a housing accommodation." [Bagherpour App. 6a]. Nor does Bagherpour dispute that the Pennsylvania Human Relations Act prohibits any person from making

[1] On September 25, 2007, Bazargani filed her own Petition for Writ of Certiorari, to which the Snyders have filed a timely Brief in Opposition.

"any inquiry or elicit any information ... concerning religious creed or ancestry – in connection with the lease of any housing accommodation." 43 P.S. § 955(h)(6).

Rather, Bagherpour argues – for the first time – that if § 955(h)(6) is read to not require a subjective intent to discriminate, the prohibition "clearly skirts on the edge of unconstitutional abridgement of free speech." [Petition at p. 6].

First, Bagherpour failed to raise any First Amendment challenge to § 955(h)(6) below, thus waiving the first issue presented in his Petition for Writ of Certiorari. Second, in each of the hypothetical violations of § 955(h)(6) suggested by Bagherpour, the prospective tenant obtains the apartment and thus suffers neither injury nor even, arguably, any discrimination. Here, in contrast to Bagherpour's victimless hypotheticals, the Jury found that Bagherpour did in fact ask about the Snyders' religious affiliation to determine their "suitability as tenants" and, following that inquiry, that the Snyders were rejected as tenants. [Bagherpour App. 3a (Special Interrogatory No. 2)].

As the Third Circuit recognized, although Bagherpour never admitted a subjective intent to discriminate, "there was ample circumstantial evidence" to support the Jury's finding that Bagherpour engaged in intentional discrimination in violation of both Pennsylvania's Human Relations Act and the federal Fair Housing Act. [Bagherpour App. 7a]. Moreover, the Third Circuit noted, the Jury likewise had ample evidence to find that the Snyders suffered

real injury in the form of mental and emotional distress. [*Id.*].

Finally, the Third Circuit agreed with the District Court that the Pennsylvania Supreme Court would apply § 955(h)(6) in accordance with its plain words, and not engraft onto the statute any inquiry about why a property owner asks a prospective tenant about his or her religious affiliation. [Bagherpour App. 6a]. The Snyders respectfully suggest that it is eminently rational, and indeed laudatory, that the statute established a bright-line or blanket prohibition concerning questions about a prospective tenant's race, religion, *etc.*, as the face of invidious discrimination seldom shows itself for what it is. Certainly, nothing in Bagherpour's Petition demonstrates that both the Third Circuit and District Court failed to properly construe or correctly apply § 955(h)(6).

B. Bagherpour's objection to the Jury's punitive damages award ignores the Jury's express finding that Bagherpour intentionally discriminated against the Snyders because they are Jewish

Bagherpour also seeks review of the Jury's $30,000 punitive damage award, suggesting that the Third Circuit had somehow misconstrued or misapplied this Court's holding in *Kolstad v. Am. Dental*

Ass'n, 527 U.S. 526, 535-36 (1999).[2] Although his argument is not entirely clear, Bagherpour appears to suggest that the Jury improperly awarded punitive damages premised on Bagherpour's "singular utterance of a prohibited inquiry . . . which "remov[ed] as a consideration into his transgression any and all motive or willfulness." [Petition at p. 7]. According to Bagherpour, such a result cannot be squared with this Court's holding in *Kolstad v. Am. Dental Assoc.*, 527 U.S. 526 (1999).[3]

Again, however, Bagherpour's argument is premised on a wholesale misrepresentation of the Jury's verdict. Contrary to Bagherpour's description, the Jury awarded punitive damages not because Bagherpour simply asked an idle question about Kenneth Snyder's religion, but because Bagherpour asked that question with the intent to determine the Snyders' "suitability as tenants." As the Jury found, and as

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[2] Significantly, Bagherpour never once cited *Kolstad* in his initial brief to the Third Circuit. Bagherpour likewise never claimed in his initial brief to the Third Circuit that the punitive damage award of $30,000 was in any way excessive. In his Petition for Writ of Certiorari, Bagherpour mistakenly states that the punitive damage award was $40,000, and then erroneously compares the punitive damage award to an alleged statutory fine as opposed to the $40,000 the Jury awarded for compensatory damages. [Petition at p. 10].

[3] *Kolstad* did not involve punitive damages under the Fair Housing Act; rather, *Kolstad* involved the availability of punitive damages under Title VII, 42 U.S.C. § 2000e *et seq.*, and the statutory construction of 42 U.S.C. § 1981a, which specifically limits and qualifies the availability of such damages.

ample evidence established, when Kenneth Snyder informed Bagherpour that the Snyders were Jewish, both Bagherpour and Bazargani rejected the Snyders as tenants because of their religious affiliation. *See Alexander v. Riga*, 208 F.3d 419, 431 (3d Cir. 2000) ("[B]ecause of the jury's finding of intentional discrimination [in violation of the FHA], the plaintiff need not also demonstrate that the conduct was particularly egregious or malicious in order to obtain punitive damages.").

Thus, the Jury's punitive damage award was premised on a finding of intentional and illegal discrimination prohibited by the Fair Housing Act. Although Bagherpour, in his Petition to this Court, seeks to portray himself as "an immigrant whose command of English was limited," (Petition at p. 9), and as someone who did not possess actual or constructive knowledge of the Fair Housing Act or the Pennsylvania Human Relations Act, Bagherpour neglects to note that he has been in the United States since 1978, received a college degree in electrical engineering, owned five rental properties himself, and worked for the Commonwealth of Pennsylvania for seven years in the Department of Engineering before going into business for himself. [App. 2 to App. 6].

Finally, while Bagherpour appears to criticize both the District Court and the Third Circuit for the jury instruction that the District Court provided on punitive damages, Bagherpour neglects to inform this Court that he failed to provide *any* proposed jury

instructions to the District Court prior to its charge to the Jury.

III. Conclusion

Presenting no colorable claim of constitutional significance or otherwise worthy of this Court's review, Bagherpour's Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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November 1, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH SNYDER, et al.	CIVIL ACTION NO. 02-CV-8845
Plaintiff	Philadelphia, Pennsylvania June 14, 2005
vs.	
TAWOOS BAZARGANI, et al.	JURY TRIAL – DAY I
Defendants	

BEFORE THE HONORABLE JOHN P. FULLAM
UNITED STATES DISTRICT COURT JUDGE
And a Jury

APPEARANCES:

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* * *

speaking Persia?

A. Of course. We speak Turkish, a mother language.

Q. So, as – Azerbaijan is – if I can clarify it, a section of Iran, in which the language is different?

A. Yes.

Q. Do you speak Persian?

A. I – I do.

Q. And –

THE COURT: Do you also speak Kurdish?

THE WITNESS: I somehow – a little bit.

BY MR. BEIFELD:

Q. So, when did you come to the United States?

A. It was November 5th, 1978.

Q. Okay.

Before I get in to that, I think I should ask, what is your religion, Mr. Bagherpour?

A. I do not practice any religion.

Q. Is you family or were – was your family Muslims?

A. They are not – they are called Muslim, but they are not practicing Islam.

Q. And that's true of you, also?

A. That's right.

Q. And what about your family here, I mean, is your – are you married, by the way?

A. Yes.

[1.142] Q. And what religion is your wife?

A. She's Iranian, also.

Q. And does she practice a religion? What is her religious –

A. No.

Q. – background?

A. She considered Muslim, anybody born in Islamic country – majority – considered Muslim.

But it doesn't mean they practice –

Q. Okay.

A. – Islam.

Q. Okay.

So, you came to the United States in 19 – I'm sorry, what was the year, 19 –

A. November 5th, 1978.

Q. Okay.

Why did you come to the United States?

A. I had a student visa to attend a university.

Q. What university did you attend?

A. First, it was University of Nebraska and University of Oklahoma and end up at Norfolk State University in Virginia.

Q. And in Norfolk, Virginia, did you finally receive a degree?

A. Electronics Engineering degree.

Q. And what year was that?

A. That was 1986, I believe.

Q. Okay.

* * *

[1.144] After you got your degree, what did you do for a living?

A. I was employed by State of Pennsylvania in Philadelphia for seven years.

Q. Okay.

THE COURT: Doing what?

THE WITNESS: Department of Engineering at Sam Davis – near the King of Prussia.

THE COURT: Thank you.

BY MR. BEIFELD:

Q. Okay.

And after seven years, what did you do after?

A. I'm self employed – after that, I decided to go to my business – my own business.

Q. Okay.

And what was the business you started?

A. I started with a gas station.

Q. Okay. All right.

And continue, after that?

A. Continue after that to car wash and I had five rental properties –

Q. Was this all at once or –

A. – at the meantime.

Q. – did it come in sequence?

A. It comes when I make the money, I invest on something.

[1.145] Q. Okay.

Do you still have the car wash?

A. No, I sold the car wash.

Q. Do you still have the gas station?

A. No, I sold it.

Q. Okay.

Do you still have five rental properties?

A. No, I have three, I sold two.

Q. Did you apply for citizenship for the U.S.?

A. Yes.

Q. And are you a citizen?

A. Yes.

Q. Did you ever – even though you – well, strike that.

You have five properties. Did you ever apply for a real estate license?

A. Never.

Q. Did you ever consider applying for a real estate license?

A. No.

THE COURT: Do you have – do you have an office anywhere or do you just work out of your home?

THE WITNESS: I – I do not have an office.